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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/757,244

01/14/2004

Heino Wendelrup

34650-00249USC1

4358

23932

7590

09/07/2005

JENKENS & GILCHRIST, PC

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EXAMINER

GOINS, DAVETTA WOODS

ART UNIT

PAPER NUMBER

2632

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,244

Applicant(s)

WENDEL RUP ET AL.

Examiner

Davetta W. Goins

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-32 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 29 and 34-36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/30/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on September 27, 2004 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of U.S. Patent Application 09/238,007, which is now U.S. Patent 6,809,649 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Allowable Subject Matter***

2. Claims 29 and 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 28 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakajou et al. (US Pat. 5,783,998).

In reference to claims 28, 30, Shipp discloses a) the claimed electronic device including a resistor, which is met by resistor 17 (Figure 1), b) the claimed processor configured to calculate a

Art Unit: 2632

resistance in the battery responsive to the resistance value and a voltage drop across the resistor, which is met by the value of current  $I_{out}$  depends on the load (tissue) resistance as well as the amplitude of  $V_{out}$ , and is measured as a voltage drop across resistor 17 (col. 5, lines 14-34), c) the claimed processor further determining whether the batter is capable of at least one of receiving and transmitting additional information based on the resistance in the battery, which is met by the encoder IC2 in this embodiment can further include an eight-bit check value which can be used, as described below, to confirm that battery identification data from encoder IC2 has been correctly received by the system (col. 4, lines 17-29), and c) the claimed circuitry for enabling communication of data between the processor and battery, which is met by encoder IC2, which preferably is integral to the package which includes battery10, stores battery identification data and communicates that battery identification data on command to an input of microprocessor 14 (col. 4, lines 6-16).

In reference to claims 31, 32, Shipp discloses the claimed current source providing a current value, the processor configured to calculate a resistance in the battery responsive to the current value and a voltage drop value at an input to the electronic device, which is met by The RF current  $I_{out}$  which passes through the tissue being cauterized flows through a current sensing resistor 17. The value of current  $I_{out}$  depends on the load (tissue) resistance as well as the amplitude of  $V_{out}$ , , and is measured as a voltage drop across resistor 17 (col. 5, lines 14-34).

Art Unit: 2632

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davetta W. Goins whose telephone number is 571-272-2957.

The examiner can normally be reached on Mon-Fri with every other Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on 571-272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D.W.G.

December 22, 2004

Davetta W. Goins  
Primary Examiner  
Art Unit 2632